

(f) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

APPENDIX C TO 24 CFR PART 3400

INDEPENDENT CONTRACTORS AND LOAN PROCESSOR AND UNDERWRITER ACTIVITIES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

The examples below are designed to aid in the understanding of loan processing or underwriting activities for which an individual is required to obtain a SAFE Act-compliant mortgage loan originator license. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this part 3400. For purposes of the examples below, the term "loan" refers to a residential mortgage loan as defined in § 3400.23 of this part.

(a) An individual who is a loan processor or underwriter who must obtain and maintain a state loan originator license includes:

(1) Any individual who engages in the business of a loan originator, as defined in § 3400.103 of this part;

(2) Any individual who performs clerical or support duties and who is an independent contractor, as those terms are defined in § 3400.23;

(3) Any individual who collects, receives, distributes, or analyzes information in connection with the making of a credit decision and who is an independent contractor, as that term is defined in § 3400.23; and

(4) Any individual who communicates with a consumer to obtain information necessary for making a credit decision and who is an independent contractor, as that term is defined in § 3400.23.

(b) A state is not required to impose SAFE Act licensing requirements on any individual loan processor or underwriter who, for example:

(1) Performs only clerical or support duties (*i.e.*, the loan processor's or underwriter's activities do not include, *e.g.*, offering or negotiating loan rates or terms, or counseling borrowers or prospective borrowers about loan rates or terms), and who performs those clerical or support duties at the direction of and subject to the supervision and instruction of an individual who either: Is licensed and registered in accordance with § 3400.103(a) (State licensing of loan originators); or is not required to be licensed because he or she is excluded from the licensing requirement pursuant to §§ 3400.103(e)(2) (time-share exclusion), (e)(5) (federally registered loan originator), (e)(6) (government employees exclusion), or (e)(7) (nonprofit exclusion).

(2) Performs only clerical or support duties as an employee of a mortgage lender or mortgage brokerage firm, and who performs those duties at the direction of and subject to the supervision and instruction of an individual who is employed by the same employer and who is licensed in accordance with § 3400.103(a) (State licensing of loan originators).

(3) Is an employee of a loan processing or underwriting company that provides loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract between the loan processing or underwriting company and the mortgage lenders or mortgage brokerage firms, provided the employee performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing and underwriting company.

(4) Is an individual who does not otherwise perform the activities of a loan originator and is not involved in the receipt, collection, distribution, or analysis of information common for the processing or underwriting of a residential mortgage loan, nor is in communication with the consumer to obtain such information.

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with § 3400.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under § 3400.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator's (or excluded individual's) direction, supervision, and instruction and the loan processor or underwriter's activities. This actual nexus must be more than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

(1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee's performance of clerical and support duties.

(2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

APPENDIX D TO 24 CFR PART 3400

ATTORNEYS: CIRCUMSTANCES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

This Appendix D clarifies the circumstances in which the SAFE Act requires a licensed attorney who engages in loan origination activities to obtain a state loan